

Application Number 09/808,851
Response dated March 22, 2004
Responsive to Office Action of December 23, 2003

REMARKS

This Amendment is responsive to the Office Action dated December 23, 2003. Applicants have amended various claims for clerical purposes unrelated to patentability. Claims 1-74 are still pending.

Claim amendments

Applicants have amended the claims for reasons unrelated to patentability, in an attempt to better clarify the invention and help the Examiner understand the invention. As outlined in greater detail below, the Applied references fail to disclose or suggest the features recited in Applicants' claims.

Overview of Applicants' claimed invention

Claim 1 recites receiving color images from source clients via a computer network, modifying the color images based on the colorimetric responses of display devices associated with the source clients, and communicating the modified color images to destination clients via the computer network.

As discussed below, the prior art discloses the modification of color images and tuning of color profiles. However, such modification of color images (in the prior art) is not based on the colorimetric responses of display devices associated with source clients as required by Applicants' claims. Moreover, nothing in the applied references suggests the communication of modified color images to destination clients, wherein the modification is based on the colorimetric responses of display devices associated with the source clients. Applicants submit that one of ordinary skill in the art would have found no suggestion of these features in the prior art teachings applied by the Examiner.

As explained in Applicants' specification, the colorimetric responses of devices associated with source clients can affect accurate color rendering at destination clients, particularly in settings such as on-line auctions, photography settings, or the like. See Applicants' specification at page 2, line 22 to page 3, line 22. In such a setting, a user may access a web server to obtain a variety of images for which color accuracy is a significant concern. For example, a person purchasing a rare guitar via an on-line auction will want

Application Number 09/808,851
Response dated March 22, 2004
Responsive to Office Action of December 23, 2003

assurances that the color of the guitar is midnight blue rather than purple. Ideally, the image viewed by the source client should appear visually equivalent to the image viewed by the destination client, particularly from the perspective of color accuracy. Unfortunately, the color accuracy of images presented in such a setting can be undermined not only by differences between the buyers' display systems, but also by differences between the various sellers' display and image capture systems. Page 2, line 29 to page 3, line 3.

Hence, in a two-way environment, such as in the auction or photo context, color inaccuracy must be reconciled at the input and output, i.e., the source and destination side of a network. In particular, a source client uploads an image to a server, and a destination client downloads the image from the server. Different buyers have different display systems, but different sellers may also have different display and image capture systems. Accurate image rendering can be improved by modifying images sent from the source client (e.g., a given seller) before sending the images to the destination client (e.g., a specific buyer). Nothing in the applied references even recognizes that the colorimetric responses of devices associated with source clients can affect accurate color rendering at destination clients, in a networked setting.

For an online auction, unlike a retail site, the images may not originate from a single source, but rather, from thousands of generally anonymous sellers acting as source clients. Page 3, line 3 to page 3, line 5. Those images, in turn, may be viewed by thousands of anonymous buyers acting as destination clients. Hence, there may be wide variation in the colorimetric responses of the various devices used by source clients and destination clients, resulting in confusion about the true color of an item offered for sale. Online photo sharing and fulfillment sites can raise similar image color accuracy issues. Page 3, lines 6-7. Again, the applied references lack any appreciation of these colorimetric issues in a networked setting.

Applicants' claimed invention provides for *modification of the color images that are sent to destination devices in the network based on the colorimetric responses of display devices associated with the source clients in the network*. Thus, Applicants' claimed invention can adjust for discrepancies from different sources, such as different sellers in an on-line auction setting, discrepancies of different photographers in a photography setting, or discrepancies in other settings where different sources may be serving the images to one or more destinations. In short, the images viewed at the destination clients are modified images which are specifically

Application Number 09/808,851
Response dated March 22, 2004
Responsive to Office Action of December 23, 2003

modified based on colorimetric responses of display devices associated with the source clients. This feature is completely lacking from the prior art teachings applied by the Examiner.

Claim 2 further recites modifying the color images based on the colorimetric responses of display devices associated with the destination clients. Thus, claim 2 requires that the color images be modified based on the colorimetric responses of display devices associated with both the source and destination clients. Accordingly, claim 2 allows for modification of the color images in view of possible discrepancies between different sources and possible discrepancies between different destinations.

Claim 16 and 17 are computer readable medium claims that include similar features to method claims 1 and 2 respectively. Claims 36 and 37 and system claims that include similar features to method claims 1 and 2 respectively. Independent claims 51, 59 and 68 recite features similar to those of to method claims 1 and 2 respectively, but also include additional features. Applicants various dependent claims recite a number of other features, including, for example, pricing techniques that can be implemented with the color modification techniques.

Rejection under 35 U.S.C. 103 - Schwarz in view of Holub

In the Office Action, the Examiner rejected claims 1-4, 7-9, 16-19, 22-27, 35-39 and 42-45 under 35 U.S.C. 103(a) as being unpatentable over Schwarz (USPN 6,075,888) (hereafter Schwarz) in view of Holub (USPN 6,157,735) (hereafter Holub). Applicants respectfully traverse the rejection. The applied references fail to disclose or suggest the inventions defined by Applicants' claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

None of the applied references discloses or suggests modifying the color images sent to destination devices over a computer network, based on the colorimetric responses of display devices associated with the source clients, as recited in claim 1 and the other independent claims. In addition, none of the applied references describes the modification of color images based on the colorimetric responses of display devices associated with both the destination clients and the source clients, as recited in claim 2 and other dependent claims.

Again, claim 1 recites receiving color images from source clients via a computer network, modifying the color images based on the colorimetric responses of display devices associated

Application Number 09/808,851
Response dated March 22, 2004
Responsive to Office Action of December 23, 2003

with the source clients, and communicating the modified color images to destination clients via the computer network. All of Applicants' independent claims recite similar features.

In rejecting claim 1, the Examiner's position appears to be that Schwartz discloses modification of color images based on the colorimetric responses of display devices. The Examiner recognizes that Schwartz fails to disclose or suggest the communication of color images over a network, whatsoever. However, the Examiner appears to be stating that Holub discloses the communication of color images over a network and that it would have been obvious to modify the teaching of Schwartz with the teaching of Holub to arrive at Applicants' claimed invention.

Neither Schwartz nor Holub, however, discloses *modifying the color images that are sent to destination devices over a computer network based on colorimetric responses of display devices associated with the source clients*. Without access to Applicants' disclosure, a person with ordinary skill in the art would not have recognized the desirability of such a feature.

For example, neither Schwartz nor Holub provides any discussion of why it would have been desirable to modify color images based on colorimetric responses of source clients and then communicate the modified color images to destination clients. Applicants' specification and not the prior art, recognizes that for various networked settings, color accuracy of images can be undermined not only by differences between various destination clients, but also by differences between the source clients. This problem generally arises only when multiple sources exists, such as on-line auction settings, photography settings, or the like.

The Examiner stated that "Schwartz discloses modifying the color images based on the colorimetric response of display devices associated with source clients." The Examiner cited the "tune input" box of FIG. 2 to support this observation. Applicants submit that the Examiner has mischaracterized Schwartz and pulled Applicants' claim language out of context.

In general, Schwartz describes techniques for adjusting output device profiles. See column 3, lines 28-29. FIG. 2 of Schwartz illustrates a specific process of creating a tuned profile for an output device such as a printer. See column 4, lines 21-23. In particular, Schwartz describes a process of creating and measuring color patches associated with the output device. Once the measurements have been made they can be verified by comparison to expected values. Column 5, lines 10-11. If the profile is accurate the decision is made to stop, but if the profile is

Application Number 09/808,851
Response dated March 22, 2004
Responsive to Office Action of December 23, 2003

not accurate a tuning transform is performed on the profile, which Schwartz labels as "tune input."

In short, the process described in Schwartz is concerned with tuning a color profile of a printer, and is completely unrelated to the features recited in Applicants' claims. For example, the "tune input" box of FIG. 2 and the entire discussion of FIG. 2 in Schwartz does not disclose or suggest the modification of images which are communicated over a network, as recited in Applicants' claims. The process described in Schwartz is concerned with the creation of a profile for the printer, which might in turn be used to modify color images at the printer.

However, Applicants' claims do not merely recite the modification of color images in the abstract sense. Rather, Applicants' claims recite the modification of color images based on the colorimetric responses of display devices associated with the source clients, and communicating the modified color images to destination clients via a computer network. Neither FIG. 2 nor anything else in Schwarz suggests such a technique or feature. In particular, not only does Schwarz lack any discussion of the communication of images over a computer network, but lacks any suggestion of the modification of images to be sent to destination clients based on the colorimetric responses of display devices associated with the source clients. Without any discussion or explanation of why it would have been desirable to modify images sent to destination clients based on colorimetric responses of display devices associated with the source clients, it is entirely unclear how a person with ordinary skill in the art would have recognized the features of Applicants' claims, in view of Schwartz.

Holub provides no teaching that would remedy the deficiencies of Schwarz relative to Applicants' claims. Holub, like Schwarz, lacks any suggestion of the modification of images to be sent to destination clients based on the colorimetric responses of display devices associated with the source clients.

While Schwartz describes a process of tuning an output device, such tuning in Schwartz is nothing akin to the modification of color images based on the colorimetric responses of display devices associated with the source clients as required by Applicants' claims. Moreover, neither Schwartz nor Holub suggests the communication of modified color images to destination clients, wherein the modification is based on the colorimetric responses of display devices associated

Application Number 09/808,851
Response dated March 22, 2004
Responsive to Office Action of December 23, 2003

with the source clients. Again, Applicants submit that this would have been completely non-obvious in view of the teaching in Schwartz and Holub.

Dependent claim 2 and other dependent claims further require modifying the color images based on the colorimetric responses of display devices associated with the destination clients. Thus, claim 2 requires that the color images be modified based on the colorimetric responses of display devices associated with both the source and destination clients. Accordingly, claim 2 allows for modification of the color images in view of possible discrepancies between different sources and possible discrepancies between different destinations. Such a combination of features is not found in either Holub or Schwarz.

Rejection under 35 U.S.C. 103 - Schwarz in view of Holub and eBay

In the Office Action, the Examiner rejected claims 5-6, 10-15, 20-21, 28-34, 40-41 and 46-74 under 35 U.S.C. 103(a) as being unpatentable over Schwarz in view of Holub, and further in view of eBay Inc. The reference "eBay Inc." (hereafter the eBay reference) is a printout of web pages which the Examiner provided.

As a preliminary matter, Applicants dispute the prior art status of the eBay reference. This reference appears to be a print out of various web-pages, and the print out appears to have taken place on the dates of October 8, 2002 and November 25, 2002. Some or all of these printed pages may or may not have existed prior to Applicants' filing date. Accordingly, it is not clear to Applicants whether some or any of the 79 printed eBay pages were actually published prior to Applicants' filing date. To date, the Examiner has failed to establish the eBay reference as prior art to Applicants' claims.

Applicants note, however, that notwithstanding its prior art status, the eBay reference, like Holub and Schwarz, lacks any suggestion of the modification of images to be sent to destination clients based on the colorimetric responses of display devices associated with the source clients. The Examiner appears to be citing the eBay reference for the notion that online auction settings were known. Applicants' do not dispute that online auctions were known at the time of Applicants' invention. However, to Applicants' knowledge, color modification techniques for such settings, as recited in Applicants' claims, was not known. The eBay reference, like Holub and Schwarz, does not disclose or suggest the modification of images to be

Application Number 09/808,851
Response dated March 22, 2004
Responsive to Office Action of December 23, 2003

sent to destination clients based on the colorimetric responses of display devices associated with the source clients.

Dependent claims

For the reasons outline above, Applicants believe that all pending independent claims are novel and non-obvious over the applied references. Accordingly, all pending dependent claims should also be allowed for the reasons outlined above.

Once again for the record, Applicants note that various dependent claims recite additional features that are not disclosed or suggested in any of the applied references. Applicants have addressed many of these additional features in previous responses. For example, Applicants have noted that the Examiner has not identified anything in the prior art akin to the pricing techniques recited in various dependent claims. To date, Applicants believe the Examiner has dismissed the features of many of Applicants' dependent claims without proper justification.

As specific examples, the applied references clearly lack anything which suggests pricing schemes, as set forth e.g., in claims 12, 13, 14, 15, 32, 33, 57, 58, 66 and 67, particularly in the context of the color image modification and communication techniques recited in the independent claims. It seems readily apparent that nothing in the prior art discloses or suggests permitting a source (or destination) client to whether the color images are to be modified and charging the fee to the source (or destination) client in the event modification of the color images is specified.

Moreover, various dependent claims recite the generation of web cookies and the transmission of the web cookies for use in the modification of color images. Thus, these various dependent claims require not only the image communication and modification techniques addressed above, but also the generation and transmission of the web cookies for use in the modification of color images. These additional features are also lacking from the applied references.

With regard to these dependent features, however, Applicant reserves further comment. This is now the fourth non-final Office Action, and little progress has been made on the application to date. For this reason, Applicants hope to advance the prosecution by focusing

Application Number 09/808,851
Response dated March 22, 2004
Responsive to Office Action of December 23, 2003

primarily on the deficiencies of the prior art with respect to the features addressed above, which are included in all pending claims.

Applicants' do not in any way acquiesce to any of the Examiner's characterizations of the applied references with respect to the features recited in Applicants' claims, and reserve the right to address features of other dependent claims at a later date.

Conclusion

All of Applicants' pending claims require receiving color images from source clients via a computer network, modifying the color images based on the colorimetric responses of display devices associated with the source clients and communicating the modified color images to destination clients via the computer network. While the applied prior art may disclose the modification of color images, such modification (in the applied prior art) is not based on the colorimetric responses of display devices associated with the source clients as required by Applicants' claims. Moreover, nothing in the applied references suggests the communication of modified color images to destination clients, wherein the modification is based on the colorimetric responses of display devices associated with the source clients. Accordingly, Applicants submit that the features of Applicants' claims would have been completely non-obvious in view of the teaching applied by the Examiner.

Applicants believe that all claims in this application are in condition for allowance. Applicants respectfully request reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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